

## **RESTORING THE PUBLIC'S TRUST IN THE NEW YORK STOCK EXCHANGE**

**September 24, 2003**

This is a pivotal moment for the New York Stock Exchange (NYSE), the investing public, and our nation's financial institutions. Much is at stake as America's financial markets struggle to recover from the effects of the worst wave of corporate scandals since the market manipulations of the late 1920s. Unfortunately, during this critical timeframe, the NYSE has not fulfilled its central mission to protect investors and the marketplace. Further, the disclosures that led to the resignation of Richard Grasso as the NYSE's Chairman and Chief Executive Officer have revealed that some of the problems that precipitated the market crisis of the past two years are reflected in the conduct of the NYSE itself. It is clear that there is a need for fundamental, urgent, and sweeping reforms at the NYSE, to restore the faith and confidence of investors.

The resignation of Mr. Grasso, accepted by the NYSE Board of Directors on September 17, 2003, was a necessary first step in addressing the challenges facing the NYSE. The Board must now bring the saga of Mr. Grasso's resignation to an appropriate conclusion by doing all it can to ensure that Mr. Grasso's final compensation package is, in the end, rational and appropriate, and that the final details of all compensation ultimately received are made fully transparent.

As its next order of business, the NYSE and its Board must take immediate and decisive action to restore the Exchange's credibility and moral authority. Only by such action will it regain the trust and confidence of the millions of Americans who trade on the Exchange and rely upon it to serve the investing public in a manner that is fair, open, and transparent. Fundamental reforms must affirm the notion that the NYSE is not a private club established to protect and act only in the interests of its members, but rather an important American institution operated in the interests of investors, the financial marketplace, and the economy.

There is no doubt that the credibility of the NYSE – and of the Board itself – has been damaged. Merely tinkering with the rules that govern the NYSE will not be enough. Nor will simplistic or piecemeal solutions suffice to meet the challenges ahead. Indeed, given the recent harm to the reputation and credibility of the NYSE and its Board, it will be difficult – if not impossible – for the NYSE to regain the public's trust on its own. In this vein, we urge the following actions to ensure that the NYSE is able to resume its preeminent role as a leader in our financial markets, and can be held out to the world as a model of corporate governance.

## **THOROUGH, INDEPENDENT EXAMINATION OF THE NYSE'S OPERATIONS AND GOVERNANCE**

Today, we – fiduciaries of some of the nation's largest public pension funds – call for a thorough, independent examination and audit of the NYSE's operations and governance, including an investigation of all the circumstances that led to Mr. Grasso's compensation package. This review should also include an assessment of responsibility and accountability for any problems or improprieties that are identified, as well as an audit of all compensation packages for NYSE high-level executives. It must also include an exhaustive review of all operations and governance issues that may inhibit the NYSE and its Board from properly fulfilling their mission to serve the investing public.

The United States Securities and Exchange Commission (SEC) should act immediately to put in place this independent review. If the SEC does not act promptly, the NYSE should do so on its own, by selecting a credible, independent person to head the review, and by granting him or her sufficient resources to conduct the examination, and full access to all the NYSE's books, records, and other pertinent information.

## **NYSE MUST EMBRACE COMPREHENSIVE REFORMS**

The NYSE must embrace comprehensive and fundamental reforms to restore its credibility, to regain the public trust in the Exchange as a rightful leader in our financial markets, and to improve its market efficiency for the investing public. These reforms must, at a minimum, ensure that the NYSE will be able to meet the following objectives, which are essential to restoring the public's trust and confidence in the Exchange:

- **The NYSE Must Serve the Investing Public.** Any reforms must ensure that the NYSE serves the interests of what it describes as its "ultimate constituency," the investing public. Reforms should include fundamental restructuring of the Board by replacing existing Board members with increased investor representation, and substantially reducing the number of Board members from the current 27.
- **The NYSE Must Fulfill its Regulatory Mission without Conflicts or Hindrance.** Any reforms must be designed to enable the NYSE to fulfill its role as protector of the integrity of the marketplace – which is fundamental to America's free enterprise system and continued economic progress. Reforms should include separation of the regulatory function from other business functions, as well as elimination of all conflicts of interest that inhibit the NYSE and its Board members from fully pursuing instances of fraud, abuse, and malfeasance.

- **The NYSE Must Set and Adhere to the Highest Standards of Governance, including Transparency.** The NYSE must set the highest standards of accountability and transparency for the companies it regulates – both broker-dealers and listed companies. Equally important, the NYSE itself must meet or exceed the very standards it sets for others. These standards must include, among other things:
  - Full transparency of executive compensation and all financial statements;
  - True independence of key committees, such as nomination, compensation, and audit committees; and
  - Other reforms such as separation between the roles of directors and management.
- **Efficient Market Structure.** The market system that the NYSE oversees must operate with optimal efficiency, for the benefit of investors and the economy. To this end, any reforms should incorporate successful models from other exchanges throughout the world.

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